**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**

**AND**

**HON'BLE SHRI JUSTICE G. BHAVANI PRASAD**

**WRIT APPEAL NO. 161 OF 2006**

**BETWEEN**

M/s Vasavi Medical & General Stores, Guntur rep. by its Proprietor

Shri Batchu Mohan Rao, Guntur.

**.....Appellant**

**And**

The Superintendent, Government General Hospital, Guntur & others

**.....Respondents**

**:: JUDGMENT ::**

Counsel for the Appellant : Shri Gopala Krishna Kalanidhi

Counsel for Respondent Nos.1 to 5 : Government Pleader for Medical,

Health and Family Welfare

Counsel for Respondent No.6 : None

**Dated:** 27-02-2006

**Per G.S. SINGHVI, CJ**

This appeal is virtually the third round of litigation in the matter of allotment of facility for retail medical shop in Government General Hospital, Guntur. The appellant has questioned the correctness of Order dated 28.12.2005 passed by the learned Single Judge whereby the writ petition filed by him questioning the decision of the authorities of the hospital to accept the offer of Rs.17 lakhs made by respondent No.6, was dismissed.

A perusal of the record shows that in furtherance of auction notice dated 15.10.2005 issued by the Superintendent of Government General Hospital, Guntur, the appellant and respondent No.6 gave their respective offers for the retail medical shop. Both the parties submitted their offers in sealed form. It, however, appears that the authorities of the hospital suo motu gave unilateral chance to the appellant to enhance the bid amount given by him and decided to accept his revised offer and that too in clear violation of clause 25 of the auction notice which envisaged that successful bidder shall have to pay the bid amount for the first year i.e. from 15.11.2005 to 31.10.2006 within 48 hours. The concerned authorities relaxed this requirement and allowed the appellant to deposit the amount in installments.

The aforementioned development prompted respondent No.6 to seek intervention of this Court through Writ Petition No.25045 of 2005. After hearing the parties, the learned Single Judge passed order dated 28.11.2005, the relevant portions of which read as under:

> "Though the petitioner made several allegations against the 7th respondent after perusing the record, this Court is not

> convinced that the 7th respondent has played any role in the matter.
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> Hence, the writ petition is dismissed against the 7th respondent.
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> A perusal of the record discloses that the sixth respondent was given an opportunity to enhance its bid amount almost unilaterally and permitted to make the deposit contrary to condition No.25 of the tender schedule. The District Collector overruled the opinion of the Tender Committee without assigning any valid reason.
>
> Therefore, there shall be interim stay of all further proceedings including execution of any agreement or to other instruments in favour of the sixth respondent.
>
> It is reported that the shop is not functioning. To avoid further inconvenience to the patients, it is directed that it shall be open to the Tender Committee or the District Collector, as the case may be to undertake negotiations with the petitioner and the 6th respondent, if both of them are agreeable, and to finalise the tender by giving equal opportunity to both the parties. In either case, the competent authority shall strictly abide by the conditions of the tender and there shall not any deviation therefrom."

In furtherance of the aforementioned direction, the Superintendent of Government General Hospital, Guntur issued notices to the appellant and respondent No.6 to give their fresh offers. Respondent No.6 gave an offer of Rs.17 lakhs but the appellant refused to participate by raising untenable objections. The competent authority accepted the offer of Rs.17 lakhs given by respondent No.6.

Dissatisfied with the aforementioned action of the Superintendent of the hospital, the appellant instituted Writ Petition No.27799 of 2005 which was dismissed by the learned Single Judge by recording the following observations.

> "The issue relating to grant of lease for establishing a medical shop in the first respondent-hospital was the subject matter of W.P.NO.25045 of 2005, which was fixed by the sixth respondent herein. The sixth respondent emerged as the highest tenderer. However, the contract was awarded in favour of the petitioner by undertaking negotiations. This

> Court passed interim orders at various stages and ultimately, directed the fourth respondent to undertake negotiations with the petitioner and the sixth respondent herein. On 17.12.2005 such a negotiation was undertaken and the sixth respondent offered Rs.17 lakhs, whereas the petitioner had walked out of the negotiations. Left with no alternative, the fourth respondent granted lease in favour of the sixth respondent. This Court took note of the said fact and closed the writ petition.
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> In the affidavit filed in support of this writ petition, the petitioner categorically stated that it refused to participate in the proceedings conducted on 17.12.2005. The said proceedings were conducted in pursuance of the directions issued by this Court. If the petitioner has walked out it, it cannot complain of any developments that have taken place therein. In that view of the matter, this Court cannot grant any relief to the petitioner."

We have heard Sri Gopala Krishna Kalanidhi, advocate for the appellant, learned Government Pleader for Medical Health and carefully scrutinized the record.

In our opinion, the appeal is wholly merit less and liable to be dismissed summarily because, as per its own assertion the appellant did not participate in the process of negotiation undertaken by the Superintendent, General Hospital, in compliance of order dated 28.11.2005 passed in Writ Petition No.25045 of 2005. By having refrained from taking part in the process of negotiation, albeit by raising untenable objections, the appellant will be deemed to have waived its right to seek allotment of medical shop in the hospital and it cannot be heard to make a complaint that the concerned authority did not give it adequate opportunity to give revised offer.

The facts of the case further disclose that as against the offer of Rs.16 lakhs given by the appellant on the basis of a clandestine negotiation undertaken by the authorities of the hospital, respondent No.6 has given an offer of Rs.17 lakhs. In other words, the public revenue has been benefited by a sum of Rs.1 lakh. Therefore, we do not find any justification for judicial intervention in the decision taken by the competent authority to accept the revised offer of

respondent No.6.

Before parting with the case, we deem it proper to mention that on 17.02.2006 and again on 20.02.2006, this Court had adjourned the case to enable the appellant to give a minimum offer of Rs.17 lakhs and deposit the amount so as to enable the Court to call upon the parties to give further offers, as was done by the Supreme Court in **Ram and Shyam Company v. State of Haryana**. Learned counsel for the appellant says that he had tried to contact his client, who was prepared to deposit a sum of Rs.7,50,000/- only. This shows that the appellant is not at all serious in giving a fair offer for the purpose of availing the facility of medical shop.

With the above observations, the appeal is dismissed.

We would have saddled the appellant with costs for dragging the Government in unnecessary litigation but refrain from doing so because it has proved to be an unsuccessful bidder.

**G.S. SINGHVI, CJ**

**G. BHAVANI PRASAD, J**

27-02-2006

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